

ACQUISITION REFORM



DoD Protest Reform Working Group

April 1995 to Present

This Group helped reform the protest process by drafting critical language for proposed legislation and commenting on proposed regulations to implement the new law. When passed, this change will ensure, among other things, the government contract award decisions are reviewed on the same basis as other government actions, thus reducing the burden of extensive litigation.

DoD PROTEST REFORM WORKING GROUP



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Team Members

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ESTABLISHMENT OF GROUP



- Officially established in May of 1995.
- Members include both contracting personnel and attorneys.
- Generated by a continuing need to provide support--
 - to the Administration as it worked various legislative and regulatory protest-related reform efforts,
 - and to each other as professionals within DoD that routinely dealt with the protest process.



ACTIONS 1995/1996



Information Technology Protests

- Supported the Administration's 1995 legislative proposals to rationalize the GSBCA protest forum for information technology (IT) procurements:
 - Provided senior DoD and Administration officials a critical, first hand knowledge of the GSBCA litigation process, and of the steps necessary to rationalize it
 - Developed the actual reform legislative proposals
 - Responded to extensive, White House requests for data regarding the number of GSBCA bid protests in IT procurements and the resultant burdens on that process

ACTIONS 1995/1996



Information Technology Management Reform Act of 1996 (ITMRA) Implementation

- ITMRA mandated significant new policies in federal sector information technology acquisition and management:
 - Reviewed initial drafts of proposed executive orders and OMB circular revisions, to ensure that agencies are empowered while retaining value-added, targeted OMB oversight.
 - Drafted innovative DoD, CIO proposal to implement ITMRA “modular contracting” policies in FAR.
 - Analyzed legal issues regarding transition of GSA’s “Brooks Era” IT contracting authority to agency acquisition authority (e.g., elimination of GSA Delegation of Procurement Authority process, continuation of multi-agency acquisitions, transfer of pending GSBCA litigation docket).

ACTIONS 1995/1996



Agency Protest Procedures

- Participated in development of executive order to require agency level protest procedures as enhanced alternative dispute resolution tool.
- Developed FAR implementation to ensure balance of agency flexibility with adequacy of procedures.

Comment on GAO Protest Rule Changes

Past Performance Protest Issues

- Studying protest issues in use of past performance in contract award.

FY 98 Protest Legislative Proposals

- Mandatory use of agency protest procedures before resort to court.
- Protest threshold at \$100,000.
- Elimination of award of protest costs except for small businesses.



IMPACT OF EFFORTS

➔ ***Repeal of the Brooks Act, elimination of GSBCA bid protest jurisdiction and enactment of the ITMRA.***

- Statutory language provided by AMC member permitted the Administration to formally release 1995 protest reform legislative proposals that “opened the door” for Brooks Act repeal.
- Protest data supplied by members, especially Navy effort, were instrumental in establishing that IT procurements routinely are heavily burdened by protest litigation, justifying legislation.
- Advice on GSBCA litigation process, particularly Air Force expertise on GSBCA obstacles to successful use of “best value” criteria in IT buys, was relied upon heavily in congressional negotiations.

➔ ***Smoother ITMRA implementation across government .***

- Innovative modular contracting coverage, developed by Air Force and Army reps, will lead federal sector IT buying practices into the 21st century, ensuring more rapid access to new technologies.



IMPACT OF EFFORTS

- ➔ ***Greater trust by contractor community of agency efforts to “self-police” award decisions.***
- ➔ ***Establishment of permanent, DoD “professional association of colleagues” to proactively seek continuous improvement to protest and related processes - solving problems before they arise.***
 - Not a substitute for formal channels, but greatly enhances their utility by providing a mechanism for discussion of legal and policy issues, and exchange of information, among the DoD professionals involved with the protest process daily.

IMPACT OF EFFORTS



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